

**INTERLOCAL COOPERATION CONTRACT  
BETWEEN  
TEXAS FACILITIES COMMISSION  
AND  
CITY OF AUSTIN**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the STATE OF TEXAS, acting by and through the Texas Facilities Commission (the "State" or "TFC") and THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS ("City"), a Texas home-rule municipal corporation, pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (Vernon 2007 & Supp. 2008).

**ARTICLE I. SERVICES.**

**1.01. SCOPE OF SERVICES.** (a) TFC and the City agree that the purpose of the Agreement is to accomplish a common goal of the Parties to: (i) accept and contract for the sale/disposal of the City's surplus property by TFC to the public and State agencies through the State Surplus Property Program; and, (ii) permit the City to acquire or purchase State surplus property held by TFC. "City Surplus Property" means movable equipment, furniture, or other personal property the City Materials Management Division has identified as at the end of a useful life but may be salvageable for reuse. Upon the identification of City Surplus Property, the City will deliver such property to the TFC Surplus Property Warehouse located at 6506 Bolm Road, Austin, Texas. However, this Agreement is not exclusive; the City may utilize other methods of disposal of City Surplus Property. Upon receipt, TFC will tag the City Surplus Property as being received from the City, record the item's fair market value on the TFC item tag in accordance with Section 1.01 (b) below, provide the City with a dated and signed receipt with the fair market value noted, and store the property in the TFC Surplus Property Warehouse until the City Surplus Property is either sold to another State agency or sold to the public.

(b) At the time of delivery of the City Surplus Property, TFC will price the City Surplus Property item(s) at fair market value as it does with all other State surplus property. In determining the fair market value of the City Surplus Property, TFC will consider an item's condition (damaged, inoperable, worn, new or used) and usefulness. An "item" for determining value may be defined as a single item or a collection/group of similar like items, as determined by TFC. For example: three (3) mismatched chairs and a desk would be considered four (4) separate items for value calculations while fifty (50) identical chairs might be considered a single item for valuation as they can be resold as a group or lot. If the City objects to the TFC's estimated value of item, the City may choose to withdraw the item transferred to TFC or TFC may reevaluate its determination.

(c) When TFC accepts and tags the transferred City Surplus Property, TFC will record the credit for the City and provide the City with a receipt. The amount that the City earns will be fifty percent (50%) of the estimated value of the item when the estimated value is equal

to or greater than \$100.00, and zero percent for an item with an estimated value of less than \$100.00.

(d) TFC agrees the City may purchase and pick up State surplus property held at TFC for the City's use based on the amount of credit the City has accrued. The City may exceed this credit amount by \$25,000.00 total amount for each Agreement term and shall reconcile the excess at the end of each quarter in accordance with Section 2.02 of this Agreement. TFC shall provide a receipt for each City purchase.

**1.02. SURPLUS PROPERTY.** City Surplus Property transferred to TFC to be sold will be treated the same as State surplus property and will be re-issued or sold "as-is" and "where-is" with no express or implied warranties and with a receipt issued to the purchaser by TFC releasing both the City and TFC of all liability for any and all defects and with appropriate indemnification language to protect TFC and the City from third party claims.

**1.03. DISCLAIMER. THE CITY SURPLUS PROPERTY IS PROVIDED "AS IS". THE CITY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ONLY TO THE EXTENT ALLOWED BY LAW REGARDING THE CITY SURPLUS PROPERTY.**

**1.04. APPLICABLE LAWS.** TFC shall be responsible for compliance with any additional or varying laws and regulations regarding the storage and sale of surplus equipment and other personal property.

## **ARTICLE II. CONSIDERATION AND RECONCILIATION.**

**2.01. CONTRACT AMOUNT.** For consideration for the services provided to the City by TFC for the sale of City Surplus Property to the public or State agencies, TFC will retain one hundred percent (100%) of proceeds minus credit accrued to the City for all City surplus property sold under this Agreement, as set forth in Section 1.01(c) above.

**2.02. RECONCILIATION.** The City and TFC will reconcile credits for City Surplus Property transfers to TFC and City purchases of State surplus property on a quarterly basis during the term of this Agreement. Subject to Section 1.01(d) expenditure limitation on City purchases, if the dollar amount for City purchases of State surplus property exceeds the City credit balance for transferred City Surplus Property at the end of each quarter period, TFC shall provide the City with an invoice for the purchases. The City shall reimburse TFC within thirty (30) days from receipt of a TFC invoice. If the City does not provide payment within thirty (30) days upon receipt of the invoice or the City fails to notify TFC as to the reason for nonpayment, TFC may cancel the Agreement by providing the City with a ten (10) day notice. The City shall remain liable for the purchase costs due to TFC under this Agreement. However, if the City's quarterly credit balance from transferred City Surplus Property to TFC is greater than City purchases of State surplus property at the end of each quarter period, TFC shall carry forward the credit to the next quarter.

### **ARTICLE III. AGREEMENT TERM.**

**3.01. TERM.** The initial term of this Agreement shall commence on September 1, 2009 (Effective Date) for one year term and end on August 31, 2010, unless terminated earlier in accordance with Section 3.04 or Section 3.05. This Agreement will automatically renew on the anniversary date for four (4) one year subsequent renewal terms unless either party gives written notice of its intent not to renew no later than sixty (60) days prior to the next renewal term.

**3.02. DISPUTE RESOLUTION.** The parties agree to use good-faith efforts to decide all questions or disputes of any nature that may arise under or by this Agreement; however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.

**3.03. DEFAULT.** A party to this Agreement shall be in default under this Agreement if the party fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, and following notice of default as provided in Section 3.04, fails to timely cure the alleged default as provided such section.

**3.04. TERMINATION.** In the event of default by a party, the other party shall have the right to terminate the Agreement for cause, by written notice delivered to the party alleged to be in default via certified mail. The notice shall be effective within thirty (30) days, unless otherwise specified, after the date of receipt of such notice. During this time period, the party alleged to be in default may cure the event of default or provide evidence sufficient to prove to the other party's reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the party alleging the default. If this Agreement is terminated for cause, the parties shall reconcile the City credits for transferred City Surplus Property and any City purchases of State surplus property. Each party agrees to promptly make the required payment due to the other party as appropriate. Each party's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

**3.05. TERMINATION WITHOUT CAUSE.** Either party may terminate this Agreement upon one hundred twenty (120) days prior written notice to the other. Early termination will be subject to an equitable settlement of the respective interests of the parties accrued up to the date of termination.

### **ARTICLE IV. FUNDING**

**4.01. NO DEBT.** This Agreement shall not be construed as creating any debt on behalf of the State of Texas and the Texas Facilities Commission in violation of TEX. CONST. art. III, § 49. Furthermore, this Agreement shall not be construed as creating a debt on behalf of the City in violation of Tex. Const. art. 11 § 5. In compliance with TEX. CONST. art. VIII, § 6, it is understood

that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

**4.02. CURRENT REVENUES.** This Agreement is authorized by the Interlocal Cooperation Act, which is Chapter 791 of the Texas Government Code. Each party's monetary obligations hereunder are payable only and solely from the current revenues appropriated and available for the performance of such obligations.

## **ARTICLE V. FORCE MAJEURE.**

**5.01. FORCE MAJEURE.** Neither TFC nor the City is liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise or due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within five (5) business days of the existence of force majeure.

## **ARTICLE VI. MISCELLANEOUS PROVISIONS.**

**6.01. INDEPENDENT CONTRACTOR.** It is further mutually understood and agreed that the City and TFC are independent contractors. This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties.

**6.02. ASSIGNMENT.** Neither party shall assign or transfer its rights under this Agreement. This Agreement is not exclusive. The City may utilize other disposal approaches including traditional auctioneer services and sealed bids.

**6.03. INCORPORATION BY REFERENCE.** Incorporated by reference the same as if specifically written herein are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those applicable rules and regulations of the State of Texas and the federal government, all of which shall apply to the performance of the services under this Agreement.

**6.04. GOVERNING LAW AND VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. **VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS AGREEMENT SHALL BE IN ANY COURT OF COMPETENT**

**JURISDICTION IN TRAVIS COUNTY, TEXAS:** provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by either party.

**6.05. SEVERANCE.** Should any one or more provisions of this Agreement be held to be void, voidable, or unenforceable by a court of competent jurisdiction, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain of full force and effect.

**6.06. HEADINGS.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**6.07. NOTICES.** Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified Mail, Return Receipt Requested, addressed to the party designated for receipt, and postage prepaid. Hand-delivered notices are considered delivered upon receipt by the addressee which may be noted in a courier confirmation report. The Parties may make routine communications by first class mail, email, fax, or other commercially accepted means. Notices and routine communications to the City and TFC shall be addressed as follows:

TFC:	Texas Facilities Commission 1711 San Jacinto Blvd. P.O. Box 13047 Austin, Texas 78711-3047 Attention: Legal Services Phone: (512) 475-2400 Fax: (512) 236-6171
City:	City of Austin 124 W. 8 <sup>th</sup> Street, Suite 308 Austin, Texas 78701 Attention: Materials Management Phone: (512) 974-2032 Fax: (512) 974-2388

Either party may change its address for notice by written notice to the other party.

**6.08. THEFT OR DAMAGE TO SURPLUS PROPERTY.** Within five (5) days of theft or damage to City Surplus Property transferred to TFC, TFC agrees to notify the City of this and provide a listing of the City Surplus Property affected.

**6.09. GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to either of the parties, nor to create any legal rights or claims on behalf of any third party. Neither the City nor TFC waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas.

**6.10. RIGHT TO AUDIT.** TFC agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all records of TFC related to the performance under this Agreement. TFC shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of TFC are resolved, whichever is longer. TFC agrees to refund to the City any overpayments disclosed by any such audit.

**6.11. SURVIVAL OF OBLIGATIONS.** All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to contract amount, reconciliation, right to audit, governmental immunity, disclaimer, limitation of liability, insurance, and theft or damage to surplus property shall survive the expiration or termination of this Agreement.

**6.12. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties. No other agreement, statement, or promise that is not contained in this Agreement shall be binding except a subsequent written amendment to this Agreement signed by both parties.

TFC certifies that it has the authority to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

City certifies that it has the authority to enter into this Agreement by virtue of the authority granted in TEX. GOV. CODE ANN., Chapter 791.

**TEXAS FACILITIES COMMISSION**

**CITY OF AUSTIN**

\_\_\_\_\_  
By: Edward L. Johnson

Title: Executive Director

Date: \_\_\_\_\_

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By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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G.C.  
Dir.  
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